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No. 711

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

CLARA SCHNEIDER,
Petitioner,

v.

THE STATE
(Town of Irvington),
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY COURT OF ERRORS AND APPEALS

OLIN R. MOYLE,
JACOB S. KARKUS,
Counsel for Petitioner.

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To the HONORABLE
THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

The petition of Clara Schneider respectfully shows to this Honorable Court:

A

Summary Statement of Matters Involved

1. *Statement of Facts.*

The petitioner, Clara Schneider, was arrested on December 7, 1935 in the Town of Irvington, New Jersey, and charged with canvassing in said town without a permit from the Chief of Police or officer in charge at police headquarters. (R. 13)

The ordinance under which she was charged prohibits canvassing, soliciting, distributing circulars, or calling from house to house without first having reported to and

received a permit from the Chief of Police or the officer in charge at police headquarters. It stipulates the conditions under which such permit may be issued and provides a penalty not exceeding $100 or thirty days in jail. (R. 14-16)

On December 17, 1935 petitioner was tried before the local Recorder, found guilty, and sentenced to pay a fine of $100 or serve thirty days in jail. (R. 14)

On December 20, 1935 the case was appealed to the Common Pleas Court of Essex County. (R. 6), where the conviction was affirmed on May 12, 1937. (R. 17-18) Opinion of the court appears at page 19 of the Record.

On June 25, 1937 the Supreme Court of New Jersey issued a writ of certiorari to the Essex County Court of Common Pleas in this case (R. 4) and after due hearing thereon the conviction was affirmed by the Supreme Court on August 10, 1937. (R. 31) Opinion of the court is reported at 120 N. J. Law 460, and is shown at page 32 of the Record.

An appeal was taken to the New Jersey Court of Errors and Appeals on September 21, 1938. (R. 1) The Court of Errors and Appeals affirmed the judgment of conviction on January 13, 1939. Its opinion is shown at page 37 of the Record.

At the time of the appeal to the Essex County Court of Common Pleas there were pending before that court four similar cases, which were tried under a stipulation of facts filed in the case of The State v. Clara Schuster. (R. 8-10)

Another stipulation was then entered into whereby it was stipulated and agreed that the substance of facts in the Schuster case apply to petitioner herein in her case. (R. 7-8) The facts applicable to this case, with the exception of name and dates, are those stated in the stipulation in the Schuster case, shown at pages 8 to 10 of the Record.

Petitioner is one of Jehovah's witnesses. The alleged violation of the ordinance consisted of visiting residents of Irvington, exhibiting to them her Testimony and Identification Card (R. 35-36) and leaving or offering to leave with them certain printed literature for which she solicited or

accepted contributions in the form of money. The literature thus circulated consisted of booklets setting forth the gospel of the Kingdom of Jehovah. Those entered as exhibits are filed separately and marked "Exhibits".

Petitioner did not apply for or obtain a permit from the police department because she regarded herself as sent by Jehovah to do His work and that such application would have been an act of disobedience to His commandment.

2. *Substantial Federal Questions Presented.*

In her appeal from the Common Pleas Court to the New Jersey Supreme Court petitioner raised the Federal questions of religious liberty and freedom of speech as guaranteed under the Fourteenth Amendment. (R. 27-28) The New Jersey Supreme Court considered and passed upon such questions and specifically held that the ordinance did not deny freedom of speech or press.

These questions were again raised on the appeal to the New Jersey Court of Errors and Appeals (R. 1-2) and that Court specifically considered in detail and passed upon the issues of freedom of speech and press as guaranteed under the Fourteenth Amendment. (R. 37-39) The Court stated:

> "We do not think it [the Irvington ordinance] violates the Federal Constitution under the rule laid down in the case of Lovell vs. Griffin, supra."

Therefore, there are presented for review Federal questions as follows:

Whether a municipal ordinance may, without violating the due process clause of the Fourteenth Amendment, require persons to secure a license to circulate and distribute printed matter of information and opinion, in exchange for contributions in the form of money.

It is contended that insofar as applied to the petitioner the said ordinance of the Town of Irvington violates the Fourteenth Amendment in the following particulars:

(a) It abridges petitioner's rights of freedom of speech and press which are included within the liberties guaranteed by the due process clause of the Fourteenth Amendment.

(b) It abridges petitioner's right to worship Almighty God according to the dictates of conscience, which right is included within the liberty guaranteed by the due process clause of the Fourteenth Amendment.

B

Reasons Relied on for Allowance of the Writ

1. The New Jersey Court of Errors and Appeals in its holding has rejected and denied the fundamental principles concerning freedom of speech and press declared by this Court in the case of *Lovell* v. *City of Griffin*, 303 U. S. 444.

Petitioner was engaged in the circulation of printed matter containing information and opinion. Her literature was not obscene or immoral, did not advocate unlawful conduct, and there is no suggestion that she was littering the streets with it. The only difference between her case and that of the appellant in *Lovell* v. *City of Griffin* is that the stipulated facts show that petitioner solicited or accepted contributions in the form of money in exchange for literature distributed. (R. 9) That is not shown in the *Lovell* case.

Because of this slight difference the lower court held that petitioner was "canvassing" and therefore subject to the license requirements of the Irvington ordinance. Assuming, for the sake of argument that her act does constitute "canvassing", for what was she canvassing? For the placement of printed matter. Her "canvassing" was merely a part of an activity of the press.

Where a person visits people at their homes for the purpose of circulating and distributing printed matter of information and opinion and accepts contributions in the form of money in exchange therefor, may she be subjected to license and censorship by a municipality without unduly restricting and denying her right to freedom of speech and freedom of press?

The New Jersey Court of Errors and Appeals answered this question in the negative. We contend that the decision is erroneous and constitutes an outright denial of the fundamental principles stated in *Lovell* v. *Griffin,* supra. This Court held that the press may not be subjected to license and censorship, and that license requirements strike at the very foundation of freedom of the press. The lower court disregarded these important principles and stated;

> ". . . we do not think it [the ordinance] violates the federal constitution under the rule laid down in Lovell vs. Griffin, supra."

2. The right to circulate and distribute printed matter is protected from infringement by constitutional guarantees of freedom of speech and press.

The court below holds that there is a distinction between "distribution" of printed matter and "canvassing" for sale of the same. It holds that the guarantees of liberty of speech and press do not apply in the case of circulation through an act designated "canvassing".

We respectfully submit that this is not a sound distinction. Selling, canvassing for sale, soliciting contributions in exchange for literature, or delivering printed matter gratis, are all ways of distribution or circulation of printed matter containing information or opinion. Liberty of circulation is as essential to freedom of press as the liberty of publishing.

Ex Parte Jackson,
96 U.S. 727, 733

Lovell v. City of Griffin, supra

It is immaterial whether the circulation is free or for a price. Newspapers, magazines and other periodicals are sold for money and cannot lawfully be subjected to license or censorship.

It would be strange indeed if the circulation of printed matter gratis would be protected and safeguarded through constitutional guarantees of liberty, but that the circulation of such matter in exchange for a money circulation should not be so protected. There is nothing in this Court's ruling in *Lovell* v. *City of Griffin* to indicate such discrimination. It makes no distinction and declares all proper activities of the press, gratis or for profit, free from license or censorship.

In *Grosjean* v. *American Press Co.*, 297 U. S. 233, this Court upheld the right of newspapers, which are *sold* for money, to be free from a license tax because such license tax would restrict circulation. This clearly indicates that the delivery of printed matter in exchange for a monetary consideration is not so heinous and reprehensible as to remove it from the liberty of unrestricted circulation.

We contend that the Irvington ordinance as applied to the acts of the petitioner is invalid under the "due process" clause of the Fourteenth Amendment in that it unreasonably restricts and denies freedom of speech, freedom of press, and freedom of worship of petitioner.

Wherefore your petitioner prays that this Court issue a writ of certiorari to the New Jersey Court of Errors and Appeals, directing it to certify to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on its docket, being number 65 October Term, 1938; and that the decree of said court may be reversed by this Honorable Court and

that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

CLARA SCHNEIDER

By OLIN R. MOYLE,
JACOB S. KARKUS,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

A

The Opinions of the Courts Below

The opinion of the New Jersey Supreme Court is reported at 120 New Jersey Law 460, and appears in the Record on page 19. The opinion of the New Jersey Court of Errors and Appeals is not reported, and is shown at page 37 of the Record.

B

Jurisdiction

1. *Timeliness.*

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925.

The decree of the New Jersey Court of Errors and Appeals was entered on February 8, 1939 (R. 40) The petition for writ of certiorari was filed herein before the expiration of three months from February 8, 1939.

2. *The Statute.*

The validity of a State statute under the Federal Constitution was drawn into question and the decision was in favor of its validity. Section 1 of said ordinance provides as follows:

"Sec. 1. No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other

matter, or call from house to house in the Town of Irvington without first having reported to and received a written permit from the Chief of Police or the officer in charge at police headquarters."

The entire statute is printed in the Record at pages 14-16.

In holding that the ordinance is not unconstitutional because it abridges freedom of speech and freedom of the press and freedom of worship, in violation of the Fourteenth Amendment to the Constitution of the United States, the New Jersey Court of Errors and Appeals applied the ordinance to petitioner and decided in its favor as so applied. Pertinent parts of the opinion of the court read:

"We deem this to be a valid exercise of the police power to promote the safety and welfare of the people. A municipality may protect its citizens against fraudulent solicitation, and when it enacts an ordinance to do so, all persons are required to abide thereby. The ordinance in question was evidently designed for that purpose and we do not think it violates the federal constitution under the rule laid down in the case of Lovell vs. Griffin, supra."

Petitioner alleged that said statute violated rights secured to her by the Federal and State Constitutions. The New Jersey Supreme Court and Court of Errors and Appeals denied that any such rights were violated.

The validity of a state statute as applied to the facts of petitioner's case under the Fourteenth Amendment was thus drawn in question in the present proceeding and the decision was in favor of its validity.

C

Statement of the Case

A full statement of the case has been given in the petition for writ of certiorari herein (supra, pages 1 to 3) and for sake of brevity will not be repeated.

D

Specification of Errors

Petitioner assigns the following errors in the record and proceedings in said case:

The court below erred in holding that the ordinance of the Town of Irvington as applied to petitioner is not void by reason of the fact that it is in conflict with Section One of the Fourteenth Amendment to the United States Constitution in the following particulars, to wit:

(a) It abridges freedom of speech and freedom of press.

(b) It prohibits free exercise of worship, of conscience and religious practice.

The court below erred in holding the ordinance as applied to be a valid exercise of the police power.

ARGUMENT

Point One

THE IRVINGTON ORDINANCE INSOFAR AS APPLIED TO THE ACTS OF PETITIONER IS UNCONSTITUTIONAL AND INVALID BECAUSE IT MATERIALLY INTERFERES WITH AND ABRIDGES LIBERTY OF SPEECH AND OF THE PRESS IN VIOLATION OF SECTION ONE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Freedom of speech and press is guaranteed under the Fourteenth Amendment to the United States Constitution:

Gitlow v. New York,
268 U. S. 652, 666

Grosjean v. American Press Co.,
297 U. S. 233

Near v. Minnesota,
283 U. S. 697, 707

Lovell v. City of Griffin,
303 U. S. 444

The case of *Lovell* v. *City of Griffin*, supra, is controlling of this present case. This momentous decision definitely emphasizes and establishes some fundamental principles concerning freedom of the press. Among these are the following:

FIRST: This Court defines what constitutes the press, in the following words:

> "The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. . . . "

SECOND: This Court in clear and unmistakable language adjudicates a death sentence upon all laws, ordinances and statutes which attempt to impose a license upon activities of the press.

The petitioner was engaged in activities of the press and exercising the right of free speech. She was distributing and circulating books and booklets containing the gospel of the Kingdom of Jehovah. Her activities were the same as the appellant's in the *Lovell* case. This Court held that Alma Lovell's activities came within the category of the press; were entitled to protection under its guarantees of liberty and freedom, and held the ordinance invalid which was used to subject her work to license and censorship.

The New Jersey Court of Errors and Appeals holds that there is a distinction between *"distribution"* of books and *"canvassing"* for sale of the same, and implies that the guarantees of liberty do not apply in the case of circulation through sale. (R. 38-39)

We respectfully submit that this is not a sound distinction. Whether printed informative matter or opinion is sold or distributed free is not a point of distinction. Such matter may be distributed in many ways, all of which could come within activities of the press. Newspapers, magazines, and other periodicals are sold for money. The distribution of them by sale is a part of the activities of the press and there-

fore cannot be subjected to license. Efforts that have been made to so license and censor periodicals have been held invalid by the courts. See:

Star Co. v. Brush,
185 N. Y. App. Div. 261

Star Co. v. Brush,
104 N. Y. Misc. 404

Dearborn Publishing Co. v. Fitzgerald,
271 Fed. 479

Just why distribution through *sale* of printed matter may be subjected to license, whereas distribution free may not be subjected to license, is not made clear in the lower court's opinion. The important thing is that the Lovell decision makes no such distinction. This Court emphatically stated that the press may not be subjected to license and that licensing provisions strike at the very foundation of liberty of the press. Such license has a tendency to restrict circulation and this Court holds that the press includes liberty of circulation as well as publication. This Court did not hold that such circulation should be free. In fact, in the case of *Grosjean* v. *American Press Co.*, supra, it was pointed out that the tendency of the license tax would be to restrict circulation, which impelled this Court to hold the law invalid. And it must be borne in mind that this applied to newspapers which are sold from place to place and house to house, not delivered gratis.

The City of New York Magistrates' Court passed upon a similar question in the case of *The People* v. *Max Banks*, 6 N. Y. S. (2d) 41 (N. Y. City Magis. Ct., First District, 1938). In this case the defendant was charged with unlawfully peddling books in the City of New York, without having a peddler's license. The ordinance in question, Chapter 36, Article 6, of the Administrative Code of the City of

New York, required a license for such purpose. The court referred to *Lovell* v. *City of Griffin* and held as follows:

"I hold it to be an infringement of the First and Fourteenth Amendments to the Constitution of the United States guaranteeing liberty of the press to require the payment of a license fee for the privilege of selling a pamphlet on the public streets and to impose a penalty of fine and imprisonment for violation of the section mentioned.

"In applying the principle laid down in the *Grosjean* case to the facts in the *Lovell* case the Chief Justice said:

> 'The ordinance cannot be saved because it relates to distribution and not to publication. "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." . . . The license tax in *Grosjean* v. *American Press Company, supra*, was held invalid because of its direct tendency to restrict circulation.'

"Following this reasoning it is clear that the imposition of a license fee or tax as a prerequisite to the sale of pamphlets on the streets has a direct tendency to restrict circulation, notwithstanding the fact that Article 6 of the Administrative Code permits free distribution of literature on the public streets without restriction. Free circulation depends as much and conceivably more upon sale than upon free distribution considering the cost involved in the free distribution of literature. Adequate circulation may only be rendered possible through sale defraying the cost of production. How effectively a license fee or tax may act as a curtailment upon sale and consequently upon circulation the Supreme Court in the Grosjean case said becomes plain when we consider that if the tax were increased to a

high degree, as it could be, if valid . . . it well might result in destroying circulation.'"

In the case of *City of Cincinnati* v. *Walter F. Mosier* (decided January 30, 1939), the defendant, one of Jehovah's witnesses, was charged with violation of a peddling law of Cincinnati. He was engaged in the same activities as petitioner in this case. On appeal from a conviction the Court of Appeals for the First Appellate District of Ohio reversed the decision and held the ordinance inapplicable to the act of disseminating printed informative matter. The court declared that the ordinance

> "can have no more application to the defendant for the acts charged in the affidavit than it could if it were attempted to apply it for an act performed outside the state, county or city."

To hold that liberty of the press does not include circulation and distribution through sale is just another means of chiseling off this fundamental right. Nowhere in the history of the battle for freedom of the press is any distinction made between informative matter given free and that which is sold. It is an unsound distinction and one which would result in serious infringement on this fundamental right.

Point Two

THE IRVINGTON ORDINANCE INSOFAR AS APPLIED TO THE ACTS OF PETITIONER IS UNCONSTITUTIONAL AND INVALID BECAUSE IT MATERIALLY INTERFERES WITH AND ABRIDGES THE RIGHT OF RELIGIOUS LIBERTY AND WORSHIP IN VIOLATION OF SECTION ONE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Religious freedom is guaranteed to all under the due process clause of the Fourteenth Amendment to the Federal Constitution.

Meyer v. Nebraska,
262 U. S. 390

Hamilton v. Regents,
293 U. S. 245

The extent to which religious freedom abounds in this country is well stated as follows:

"In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights is conceded to all."

Watson v. Jones,
80 U. S. 728

State v. De Laney,
1 N. J. Misc. 619

Petitioner entertained the conscientious belief that as a Christian she is commanded to preach the gospel. She has the full and free right to entertain that belief. She was arrested and convicted for engaging in the practice of a religious principle, to wit, the principle that Christians must "preach the word; be instant in season, out of season." She has the full and free right to practice that principle unless by so doing she violates the laws of morality or property or infringes on personal rights. To justify application of the restrictive terms of the ordinance to the acts of the petitioner the burden is on the municipality to show that she violated the laws of morality or property or infringed on personal rights.

No such justification is shown in the record.

The Common Pleas Court held that the action of the petitioner invades personal and property rights by "insisting upon invading their private homes at any hour of the day or night", and the New Jersey Supreme Court and Court of Errors and Appeals seem to be of the same opinion.

There is not one scintilla of evidence to support a claim of such insistence. It is entirely outside of the record.

To invade means to encroach or infringe upon the rights of others; to enter as with a hostile army. The stipulated facts show that on the date in question the petitioner merely called at a number of houses and exhibited to the occupants the testimony and identification card, and that she left or offered to leave with said occupants certain books or booklets, for which she accepted contributions. By no stretch of the imagination can these acts be termed an invasion of personal or property rights. If they are, then every preacher, priest, parish visitor, social worker, political worker or socialite who calls on the people invades their rights.

No municipality has the right and authority to license acts which violate the laws of morality or property or infringe on personal rights. Yet the lower court has convicted the petitioner and imposed a heavy penalty for her failure to secure a permit from the police department to perform

an act which the Common Pleas Court designates an invasion of the people's rights. The judgment of conviction must therefore be termed illegal and void.

To affirm the conviction of the petitioner this Court must disregard the ruling in *Watson* v. *Jones, supra,* and in *Lovell* v. *City of Griffin, supra;* for in no sense of the word can the defendant's acts be construed to be a violation of the laws of morality or property, or infringement on personal rights.

CONCLUSION

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the errors complained of may be corrected, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the New Jersey Court of Errors and Appeals and finally reverse it.

Respectfully submitted,

OLIN R. MOYLE,
JACOB S. KARKUS,
Counsel for Petitioner.

February 27, 1939.

SU

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JACQ
of